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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

GERALD LINN YOST,

Defendant and Appellant.

F077287

(Super. Ct. No. BF169348A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Charles R. Brehmer, Judge.

Kendall D. Wasley, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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* Before Levy, Acting P.J., Detjen, J. and Snauffer, J.

INTRODUCTION

On January 3, 2018, appellant, Gerald Linn Yost, entered into a plea agreement in which he would plead guilty to allegations that he committed robbery (Pen. Code, § 212.5, subd. (c), count 1)¹ and admit two prior prison term enhancements (§ 667.5, subd. (b)) and two prior serious felony convictions within the meaning of the three strikes law (§§ 667, subds. (c)-(j) & 1170.12, subds. (a)-(e)). Under the terms of the agreement, two prior serious felony conviction enhancements (§ 667, subd. (a)) and four prior prison term enhancements would be dismissed.

Yost executed a felony advisement, waiver of rights, and plea form setting forth the allegations he was admitting and expressly waiving his rights pursuant to *Boykin v. Alabama* (1969) 395 U.S. 238; *In re Tahl* (1969) 1 Cal.3d 122 (*Boykin/Tahl*) as set forth on the form. Yost acknowledged on the form that the court had indicated one of his prior serious felony allegations would be dismissed pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, and he faced a prison term of eight years.

At the change of plea hearing, the court reviewed the terms of the plea agreement with Yost, including a prison term of eight years. The court established that Yost read and understood his constitutional rights and had executed the waiver of rights form. The parties stipulated to a factual basis for the plea based on the preliminary hearing transcript.² Yost admitted count one, two prior serious felony allegations, and two prior

¹ Unless otherwise designated, all statutory references are to the Penal Code.

² City of Bakersfield Police Officer Christina Perkins was dispatched to a Rite Aid on 23rd Street to investigate a robbery on July 25, 2017. Perkins spoke to D.J. who worked at the pharmacy in loss prevention. D.J. explained that at 11:59 a.m., she was standing just outside the front exit doors and noticed Yost shoplifting two 1.75 liter bottles of Jack Daniel's whiskey. D.J. confronted Yost after he exited the store without paying for the bottles. There was video of Yost's theft. When D.J. confronted Yost, the two struggled. Using one of his hands, Yost grabbed D.J. by the throat and squeezed tightly. Perkins confirmed D.J.'s account of events by viewing the video surveillance and saw that Yost was the shoplifter.

prison term enhancements. The court granted the People's motion to dismiss the remaining allegations.

On February 1, 2018, the court denied probation and struck one of the prior serious felony allegations. The court imposed a sentence of three years on count 1, doubled to six years pursuant to the three strikes law, and a sentence of one year for each of the prior prison term enhancements. Yost's total sentence is eight years. The court imposed a restitution fine of \$300, imposed other fines and fees, and granted actual custody credits of 173 days plus 25 days of local conduct credits for total custody credits of 198 days.

The trial court granted Yost's request for a certificate of probable cause. Appellate counsel has filed a brief seeking independent review of the case by this court pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*).

APPELLATE COURT REVIEW

Yost's appointed appellate counsel has filed an opening brief that summarizes the pertinent facts, raises no issues, and requests this court to review the record independently. (*Wende, supra*, 25 Cal.3d 436.) The opening brief also includes the declaration of appellate counsel indicating that Yost was advised he could file his own brief with this court. By letter on August 13, 2018, we invited Yost to submit additional briefing. To date, he has not done so.

After independent review of the record, we have concluded there are no reasonably arguable legal or factual issues.

DISPOSITION

The judgment is affirmed.